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HOUSE OF REPRESENTATIVES
REPORT
101-369

CERTIFICATES OF DOCUMENTATION FOR CERTAIN VESSELS

NOVEMBER 17, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 3133]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 3133) to authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel *Jamal*, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and substitute the following:

Notwithstanding section 12106 of title 46, United States Code and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for employment in the coastwise trade of the United States for the following vessels:

(1) CAMELOT (United States official number 536408),
(2) HARBOR EXEC (United States official number 563895),
(3) JAMAL (United States official number 611165),
(4) KARLISSA (United States official number 950453),
(5) MAGNUM FORCE (United States official number 287968),
(6) TERANGI NO. 2 (United States official number 572048),
(7) 3/4 TIME (United States official number 907962), and
(8) WINDDANCER (United States official number 955031).

SEC. 2. Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the submersible vessel PC-1501 may engage in the coastwise trade.

Amend the title to read:

To authorize issuance of certificates of documentation for employment in the coastwise trade of the United States for certain vessels, and for other purposes.

39-006

H563-21

PURPOSE OF THE LEGISLATION

H.R. 3133, as reported, grants coastwise trading privileges to nine vessels: *Camelot, Harbor Exec, Jamal, Karlissa, Magnum Force, Terangi No. 2, 3/4 Time, Winddancer,* and the *PC-1501.*

BACKGROUND AND NEED FOR THE LEGISLATION

Subject to certain limited exceptions, the provisions of law known as the Jones Act (section 27 of the Merchant Marine Act of 1920) and sections 12106–12108 of title 46, United States Code provide that only those vessels built in the United States, continuously documented under the laws of the United States, and continuously owned by U.S. citizens may transport merchandise or passengers in the coastwise trade of the United States.

Where the facts applicable to a particular vessel suggest that the U.S.-built or U.S.-owned requirements have not been satisfied, the Coast Guard may not issue a document permitting coastwise trading privileges for that vessel unless the requirements of the Act are statutorily waived.

In the past, the Committee has approved special legislation when the owner proved there were extenuating circumstances, such as severe financial hardship. For example, a person may have purchased a vessel and then, only after spending considerable money in U.S. shipyards to refurbish it, learned that there was a defect in the chain of title or that the vessel was built foreign. The Committee also has approved special legislation when the vessel or its operation was unique and documentation for commercial service or the fisheries was in the national interest.

The Administration has consistently opposed any relaxation of the cabotage laws, absent some compelling reason. It feels the coastwise trading and fisheries restrictions have been enacted to protect and foster United States maritime and shipyard industries and that any relaxation should be approached with caution. However, when Congress has documented compelling reasons, the Administration has not actively opposed these special enactments.

"CAMELOT" (H.R. 3226)

H.R. 3226 was introduced by the Honorable Charles E. Bennett (D–FL) on September 6, 1989 to permit the *Camelot* to engage in the coastwise trade.

The *Camelot,* U.S. official number 536408, is a Mayflower 40 all-teak ketch. It was built in Hong Kong in 1961, and was purchased by Mr. and Mrs. Matt Taylor of St. Augustine, Florida, in November 1988 for $70,000. Since the date of purchase, the vessel has undergone repairs in Florida totaling $90,000.

The Taylors acquired the vessel to create a recreational excursion charter business. They were unaware that vessels purchased outside the United States could not be certified for employment in the coastwise trade of the United States. Since the vessel was purchased in good faith and the owners have expended a substantial sum of money to repair the vessel, the Committee believes that legislative relief is appropriate to remedy this situation.

"HARBOR EXEC" (H.R. 2767)

H.R. 2767 was introduced by the Honorable C. Thomas McMillen (D–MD) on June 27, 1989, to permit issuance of a certificate of documentation for the *Harbor Exec* for employment in the coastwise trade of the United States.

The *Harbor Exec,* U.S. official number 563895, is a 42-foot Grand Banks vessel that was built in Singapore in 1974. It is presently owned by John and Nancy Gardner of Glen Burnie, Maryland.

The owners would like to use the *Harbor Exec* for charter purposes in Baltimore Harbor. They assert special legislation would not prejudice existing businesses because no such vessel charter service currently operates in Baltimore Harbor.

The *Harbor Exec* cannot be operated in the coastwise trade because it was built in Singapore. The Gardners allege that they had no knowledge of the prohibition against documentation of foreign-built vessels at the time they made their purchase.

"JAMAL" (H.R. 3133)

H.R. 3133 was introduced by the Honorable Norm Dicks (D–WA) on August 3, 1989, to permit issuance of a certificate of documentation for the *Jamal* for employment in the coastwise trade of the United States.

The *Jamal,* U.S. official number 611165, is a 50-foot oil screw vessel of 32 gross tons owned by James S. Hanna of Tacoma, Washington. The hull was built in Taiwan in 1979 and shipped to the United States. The engine, instruments, and other fittings were all assembled in the United States.

Now that Mr. Hanna is retired, he would like to use the *Jamal* for charter trips of six or fewer passengers out of Bellingham, Washington. His trips would be around the San Juan Islands of Washington State to include trips to Bedwell Harbor, British Columbia.

Mr. Hanna has produced letters from two yacht charter companies within Washington indicating that they do not object to his proposed business. Consequently, there is no real issue of unfair competition in the region's charter trade.

The *Jamal* cannot be operated in the domestic coastwise trade because her hull was built foreign.

"KARLISSA" (H.R. 2865)

H.R. 2865 was introduced by the Honorable E. Clay Shaw, Jr. (R–FL) on July 11, 1989, to permit issuance of a certificate of documentation for the *Karlissa* (U.S. official number 950453) for employment in the coastwise trade of the United States.

The following chronology is necessary to understand the documentation problem encountered with this vessel:

1. February 15, 1985—the M/V *A. Regina* runs aground on Mona Island Reef near the Commonwealth of Puerto Rico.
2. February 27, 1985—the Coast Guard orders the vessel's owners to remove it from the reef.
3. August 18, 1985—the owners seek to limit their liability in the United States District Court of Puerto Rico.

4. October 31, 1985—the Commonwealth's Department of Natural Resources files a claim against the owners.

5. November 17, 1986—Congress directs the Secretary of the Army to remove the *A. Regina* at Federal expense, but no money was appropriated (Public Law 99-662).

6. November 17, 1988—Congress directs the Secretary of the Army to transfer "title to a Delong Pier Jack-up Barge Type A, S/N BPA6814, directly to any entity, including any private corporation, to be used to assist in the removal of the wreck of the said *A. Regina*" (Public Law 100-676).

7. November 28, 1988—the United States files a civil suit against the owners of the *A. Regina* at the same time as a Consent Decree settles the case in an "environmentally safe manner."

8. December 14, 1988—Titan Maritime Industries, Inc. of Fort Lauderdale, Florida, is awarded title to the barge, *Karlissa*, in compliance with the Congressional directive in Public Law 100-676.

9. January 9, 1989—the *Karlissa* leaves Philadelphia under tow.

10. January 28, 1989—the *Karlissa* arrives in Fernandina Beach, Florida.

Consequently, Titan assumed that, when Congress transferred title to the barge to it, the barge would come with the ability to engage in the coastwise trade. However, because the Army Corps of Engineers cannot produce records confirming that the barge was built in the United States, Titan cannot obtain a certificate of documentation. After obtaining a ruling from the Customs Service, Titan was able to begin removing the wreck of the *A. Regina*. Titan contends, however, that Congress intended that the *Karlissa* be delivered to it with appropriate documentation for the coastwise trade.

"MAGNUM FORCE" (H.R. 2583)

H.R. 2583 was introduced by the Honorable Julian C. Dixon (D-CA) on June 7, 1989, to permit issuance of a certificate of documentation for employment in the coastwise trade for the *Magnum Force*.

The *Magnum Force*, U.S. official number 287968, is an 86-foot motor yacht that was built in California in 1943 and placed into U.S. military service as a coastal patrol and rescue vessel until the end of World War II. In 1970, the boat was refitted with General Motors diesel engines, and a new superstructure was added in 1986.

The vessel retained her U.S. registration until 1981 when she was sold to a Canadian interest. In 1988, the ship was returned to the United States. The *Magnum Force* is owned by Charter Memories, Inc.—a Delaware corporation which is a partnership comprised of Dr. and Mrs. Phillip C. Diorio of Torrance, California, and Bertram McCann of Marina del Rey, California.

The vessel accommodates about 100 people on a cruise within the Marina del Rey Harbor, 50 out on the ocean, and 8 overnight. The partnership wants to charter the *Magnum Force* for harbor cruises,

and currently rents her by the hour with a crew and catering service ("passenger for hire"). She also is used in charity work.

The *Magnum Force* cannot be operated in the domestic coastwise trade because she was formerly owned by a non-U.S. citizen. There are two other problems that must be acknowledged. The Coast Guard inspected the vessel for safety regulations on December 2, 1988, and showed three unsatisfactory items. The owners contend that all corrections have been made. Finally, the original owner sold the vessel to the Canadian interest without the approval of the Maritime Administration (MARAD). However, by order dated August 28, 1989, MARAD retroactively approved this sale. Consequently, a certificate of documentation was issued on September 15, 1989, enabling the *Magnum Force* to be used for recreational purposes only.

"PC-1501" (H.R. 2768)

H.R. 2768 was introduced by the Honorable E. Clay Shaw, Jr. (R-FL) on June 27, 1989, to permit issuance of a certificate of documentation for the submersible vessel *PC-1501* for employment in the coastwise trade of the United States.

The *PC-1501* was built in Riviera Beach, Florida, in 1973. It is approximately 22 feet in length, less than five gross tons, and is currently in class with the American Bureau of Shipping (ABS). It was sold foreign and eventually purchased by Subsee, Inc., a Florida corporation which completely disassembled and totally refurbished the vessel in Florida in 1989 under ABS supervision.

Subsee purchased the vessel with the primary intent of chartering it for marine science research.

Subsee has since learned that its primary market is, in fact, tourist rides in relatively shallow waters within the three-mile limit. The success of this venture will be severely limited if not permitted to operate within the three-mile limit. The submersible will be a tourist attraction with economic benefit to the area of operation—which will most likely be the Florida Keys.

In time of national emergency, the *PC-1501* would be an asset to the Government with its unique ability to carry approximately 12 people and substantial equipment to depths of 1,200 feet and stay down for several days, if necessary.

The *PC-1501* has never been registered. This will have to be done prior to operation in the coastwise trade. The vessel cannot be operated in the domestic coastwise trade because it was sold foreign.

"TERANGI NO. 2" (H.R. 431)

H.R. 431 was introduced by the Honorable Frank Horton (R-NY) on January 3, 1989, to permit issuance of a certificate of documentation for the *Terangi No. 2* for employment in the coastwise trade of the United States.

The *Terangi No. 2,* U.S. official number 572048, was built in St. Petersburg, Florida and was documented by its first owner. Her next three owners, including two Canadians, failed to document her. Thus, it has been impossible for her present owner, George Arney of Sodus Point, New York, to show an adequate chain of title for documentation.

Importantly, the vessel has never been docked outside of American waters. The Canadian owners kept the boat at Alexandra Bay on the St. Lawrence River.

Mr. Arney was unaware of the documentation requirements at the time he purchased the vessel, and it has caused him financial hardship ever since.

The *Terangi No. 2* cannot be operated in the coastwise trade because she was formerly owned by several non-U.S. citizens.

"3/4 TIME" (H.R. 1328)

H.R. 1328 was introduced by the Honorable Charles E. Bennett (D-FL) on March 8, 1989, to permit issuance of a certificate of documentation for the *3/4 Time* for employment in the coastwise trade of the United States.

The *3/4 Time,* U.S. official number 907962, is a yacht of 23 gross tons and 38 feet in length. She was manufactured by Bertram in Miami, Florida, in 1982, and is presently owned by Richard L. Holt of Jacksonville, Florida. Mr Holt purchased the vessel from the only previous owner, Jose D. Fernandez (a Cuban emigre), on November 5, 1986.

Mr. Holt would like to use the *3/4 Time* for charter purposes; however, she cannot be operated in the coastwise trade because she was formerly owned by a non-U.S. citizen. Mr. Holt did not know that a foreign interest in the chain of title would preclude him from obtaining a certificate of documentation.

"WINDDANCER" (H.R. 3329)

H.R. 3229 was introduced by the Honorable Thomas E. Petri (R-WI) on September 22, 1989, to permit issuance of a certificate of documentation for the *Winddancer* for employment in the coastwise trade of the United States.

The *Winddancer,* U.S. official number 955031, is a 33-foot Chris Craft vessel that was built in the United States in 1969. She is owned solely by Donald M. Otto of Manitowoc, Wisconsin.

The Coast Guard has regulatory provisions to grant a waiver to the requirement to produce a complete chain of title in recordable form when other competent and persuasive evidence of the passage of title is provided. However, evidence of U.S. citizenship for all owners in the chain must be furnished.

Despite hiring legal counsel, Mr. Otto has been unable to furnish the complete chain of title and citizenship evidence. Although there is no evidence to suggest foreign ownership in the chain of title, he cannot comply with the Coast Guard regulations.

Mr. Otto desires to operate a charter service in Manitowoc. If the *Winddancer* is not documented, he will be unable to use her to maintain his livelihood.

COMMITTEE ACTION

H.R. 3133 grants or restores coastwise trading privileges to nine vessels: *Camelot, Harbor Exec, Jamal, Karlissa, Magnum Force, Terangi No. 2, 3/4 Time, Winddancer,* and the *PC-1501.*

On May 3, 1989, the Subcommittee on Merchant Marine held a hearing on legislation to grant or restore coastwise trading privi-

leges. The *3/4 Time* (H.R. 1328) was one of the vessels considered at that time.

The other vessels considered at the hearing were the *Northern Victor* (H.R. 1580), *African Queen* (H.R. 1830), and the *Nancy Ann* (H.R. 2227). The *Northern Victor* and *African Queen* have been included in Public Law 101-92, dated August 16, 1989. H.R. 2227, the *Nancy Ann,* was withdrawn from further consideration by its sponsor, the Honorable John E. Porter (R-IL).

On June 29, 1989, the Subcommittee on Merchant Marine met in markup session and reported H.R. 1580, which included the following vessels:

Harbor Exec (H.R. 2767)
PC-1501 (H.R. 2768)
Terangi No. 2 (H.R. 431)
3/4 Time (H.R. 1328)

Legislation on the following vessels was introduced following the May 3rd hearing: *Camelot* (H.R. 3226), *Jamal* (H.R. 3133), *Karlissa* (H.R. 2865), *Magnum Force* (H.R. 2583), and *Winddancer* (H.R. 3329). Hearings were not held on these vessels.

While restrictions on coastwise trading privileges should not be removed through routine enactment of private bills, the Committee believes that, in the case of these nine vessels, there are compelling reasons to grant or restore privileges. Therefore, on September 26, 1989, the Full Committee met in markup session and, by voice vote, ordered H.R. 3133, as amended, favorably reported to the House for consideration.

SECTION-BY-SECTION ANALYSIS

Section 1

This section provides that, notwithstanding certain sections of chapter 121 of title 46, United States Code and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date the bill is enacted, certain vessels may be issued documents to lawfully engage in the coastwise trade. The vessels included are the *Camelot, Harbor Exec, Jamal, Karlissa, Magnum Force, Terangi No. 2, 3/4 Time,* and *Winddancer.*

Section 2

This section provides that, notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the submersible vessel *PC-1501* may engage in the coastwise trade. It was not necessary to waive section 12106 of title 46, United States Code on this vessel because it weighs less than five net tons.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee has assessed the potential for inflationary impact and has concluded that, because no costs are associated with H.R. 3133, the bill will have no inflationary impact.

COST OF THE LEGISLATION

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee asserts that there is no cost to this

legislation. The Committee has not received a different cost estimate from any affected Executive department or agency.

COMPLIANCE WITH HOUSE RULE XI

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(1) The legislation discussed in this report reflects the testimony obtained by the Committee on H.R. 1328, H.R. 1803, H.R. 1580, and H.R. 2227 during one legislative hearing on May 3, 1989.

(2) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation since it does not provide new budget authority or new or increased tax expenditures.

(3) The Committee on Merchant Marine and Fisheries has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at under clause 4(C)(2) of rule X of the Rules of the House of Representatives.

(4) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of the costs for H.R. 3133 under section 403 of the Congressional Budget Act of 1974. The submission is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 11, 1989.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3133, a bill to authorize issuance of certificates of documentation for employment in the coastwise trade of the United States for certain vessels, and other purposes. The bill was ordered reported by the House Committee on Merchant Marine and Fisheries on September 26, 1989. Enactment of H.R. 3133 would not result in any cost to the federal government or to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

DEPARTMENTAL REPORTS

A departmental report was received on H.R. 2768, the submersible vessel *PC–1501,* from the General Counsel of the Department of Transportation, dated October 25, 1989. The Committee has not received departmental reports on H.R. 3133 or the other legislation incorporated therein (H.R. 431, H.R. 1328, H.R. 2583, H.R. 2767, H.R. 2865, H.R. 3226, and H.R. 3329).

At the May 3, 1989 hearing, a representative of the United States Coast Guard (Department of Transportation) testified on several pieces of legislation to grant coastwise or fisheries privileges.

U.S. DEPARTMENT OF TRANSPORTATION,
Washington, DC, October 25, 1989.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Transportation with respect to H.R. 2768, a bill "To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the submersible vessel *PC-1501.*"

The *PC-1501* is a 22-foot manned submersible vessel of less than five net tons that was constructed in 1973 by Perry Submarine Builders, Rivera Beach, Florida. Such vessels are generally used for scientific research or recreation.

Section 27 of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 883), and collateral statutes (Jones Act) provide in part that any vessel having acquired the lawful right to engage in the coastwise trade and later placed under foreign registry shall not hereafter reacquire the lawful right to engage in the coastwise trade. As the *PC-1501* had been transferred to foreign registry, legislation is required for the current owner to operate the vessel for hire in the U.S. coastwise tourist trade.

This Department strongly supports the Jones Act. However, as the *PC-1501* is a U.S. constructed vessel of less than five net tons, we are unaware of how the enactment of the proposed legislation would adversely impact on the U.S. maritime industry. Therefore, the Department of Transportation does not object to H.R. 2768.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

PHILLIP D. BRADY,
General Counsel.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the committee states that H.R. 3133, as reported, would make no change to existing law.

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